

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC,
Plaintiff,

v.

APPLE INC.,
AMERICAN AIRLINES, INC.,
DELL, INC.,
HYATT CORPORATION,
MARRIOTT INTERNATIONAL, INC., &
BARNES & NOBLE, INC.,

Defendants.

Case No. 6:08-cv-447-LED

**PLAINTIFF EMG TECHNOLOGY, LLC’S ANSWER TO
DEFENDANT MARRIOTT INTERNATIONAL, INC.’S COUNTERCLAIMS TO
PLAINTIFF’S FIFTH AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff EMG Technology, LLC (“EMG”) hereby responds to the Counterclaims of Defendant Marriott International, Inc. (“Marriott”) (Docket No. 194) asserted in response to EMG’s Fifth Amended Complaint as follows. Unless expressly admitted herein, EMG generally denies all allegations in the Counterclaims. EMG expressly denies that Marriott is entitled to any relief whatsoever in connection with its Counterclaims, including, but not limited to, all relief requested in Marriott’s Prayer for Relief.

Parties

1. Responsive to Counterclaim Paragraph 1, EMG admits the allegations.
2. Responsive to Counterclaim Paragraph 2, EMG admits the allegations.

Jurisdiction and Venue

3. Responsive to Counterclaim Paragraph 3, EMG admits the allegations.

4. Responsive to Counterclaim Paragraph 4, EMG admits that it filed a Complaint against Marriott seeking, inter alia, a judgment that Marriott has infringed the claims of the ‘196 Patent and the ‘845 Patent, and that Marriott has denied those allegations. EMG further admits that an active, ripe, and justiciable controversy currently exists between EMG and Marriott regarding the infringement and validity of the ‘196 Patent and the ‘845 Patent. Except as expressly admitted, EMG denies the allegations.

5. Responsive to Counterclaim Paragraph 5, EMG admits that this Court has personal jurisdiction over EMG because EMG has voluntarily submitted to this Court’s jurisdiction. Except as expressly admitted, EMG denies the allegations.

6. Responsive to Counterclaim Paragraph 6, EMG admits that this Court is the proper venue for this action. EMG denies that transfer of this case pursuant to 28 U.S.C. § 1404 is proper. Except as expressly admitted, EMG denies the allegations.

COUNTERCLAIM I
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE ‘196 PATENT

7. Responsive to Counterclaim Paragraph 7, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-6 above as though fully set forth herein.

8. Responsive to Counterclaim Paragraph 8, EMG denies the allegations.

9. Responsive to Counterclaim Paragraph 9, EMG denies the allegations.

COUNTERCLAIM II
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE ‘196 PATENT

10. Responsive to Counterclaim Paragraph 10, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-9 above as though fully set forth herein.

11. Responsive to Counterclaim Paragraph 11, EMG denies the allegations.

12. Responsive to Counterclaim Paragraph 12, EMG denies the allegations.

COUNTERCLAIM III
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘196 PATENT

13. Responsive to Counterclaim Paragraph 13, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-12 above as though fully set forth herein.

14. Responsive to Counterclaim Paragraph 14, EMG denies the allegations.

15. Responsive to Counterclaim Paragraph 15, EMG denies the allegations.

COUNTERCLAIM IV
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘845 PATENT

16. Responsive to Counterclaim Paragraph 16, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-15 above as though fully set forth herein.

17. Responsive to Counterclaim Paragraph 17, EMG denies the allegations.

18. Responsive to Counterclaim Paragraph 18, EMG denies the allegations.

EMG’S AFFIRMATIVE DEFENSES TO MARRIOTT’S COUNTERCLAIMS

EMG asserts the following affirmative defenses to Marriott’s Counterclaims:

First Affirmative Defense (Failure to State a Claim)

The Counterclaims fail to state a claim upon which relief may be granted against EMG.

Second Affirmative Defense (Laches)

The claims asserted in the Counterclaims are barred by the doctrine of laches.

Third Affirmative Defense (Waiver)

The claims asserted in the Counterclaims are barred by the doctrine of waiver.

Fourth Affirmative Defense (Estoppel)

The claims asserted in the Counterclaims are barred by the doctrine of estoppel.

EMG reserves the rights to assert any other defenses to Marriott’s Counterclaims that discovery may reveal.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against Marriott on Marriott's Counterclaims as follows:

- (a) Dismissing Marriott's Counterclaims with prejudice and ordering that Marriott is entitled to no recovery on the Counterclaims, including but not limited to all relief requested in Marriott's Prayer for Relief;
- (b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and
- (c) Awarding EMG such other and further relief as this Court deems just and appropriate.

JURY DEMAND

EMG demands a jury trial on all issues so triable.

Dated: January 7, 2010

Respectfully Submitted,

By: /s/ Charles Ainsworth

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 7th day of January, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth
CHARLES AINSWORTH

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